Supreme Court, U.S.
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No. 92-1451

IN THE
Supreme Court of the United States
OCTOBER TERM, 1992

TRAVELLERS INTERNATIONAL AG.,
Petitioner,
v.
TRANS WORLD AIRLINES, INC.,
OFFICIAL UNSECURED CREDITORS' COMMITTEE
OF TRANS WORLD AIRLINES, INC., and
SUE L. ROBINSON, UNITED STATES DISTRICT JUDGE,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

REPLY BRIEF OF PETITIONER

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1. Respondent TWA addresses a different question from that presented. This case presents the question whether a preference action defendant's right to a jury trial is negated by a proof of claim that merely seeks to protect that defendant's right to assert the claim that will arise if it loses the preference action. Petitioner submits that such a proof of claim does *not* defeat its right to a jury trial, because it does *not* invoke the bankruptcy claims allowance process. TWA addresses instead the question whether a proof of claim that *does invoke* the claims allowance process negates the right to a jury trial. *Compare* Pet. at i *with* Opp. at i. Petitioner agrees that TWA's issue, which is irrelevant here, was decided by

Granfinanciera, S.A. v. Nordberg, 492 U.S. 33 (1989), and *Langenkamp v. Culp*, 498 U.S. 42, 111 S.Ct. 330 (1990), and thus does not warrant further review by this Court.

In the decisions cited by Travellers as being in conflict with the decision below, the courts of appeals have distinguished a proof of claim that asserts a present right to share in the bankruptcy estate from one that seeks to preserve a right that might arise from an action initiated by the debtor. The latter does not affect the defendant's right to adjudication by a jury in an Article III court. *See, e.g., Piombo Corp. v. Castlerock Properties (In re Castlerock Properties)*, 781 F.2d 159, 161-62 (9th Cir. 1986), and cases cited on page 15 of the Petition. TWA does not dispute the essence of those holdings; rather it erroneously asserts that they are inconsistent with *Granfinanciera* and *Langenkamp* and that they were necessarily overruled by those cases.

The operative question in determining entitlement to a jury trial is not whether a proof of claim has been filed but whether the creditor has invoked the equitable claims allowance process in which the right to a jury is inapplicable. *Granfinanciera*, 492 U.S. at 58; *Langenkamp*, 498 U.S. at —, 111 S.Ct. at 348. In contrast to the decision below, the Ninth and Second Circuit decisions cited by Travellers recognize that the rights established by Article III and the Seventh Amendment cannot be defeated by formalistic incantations. They are fundamental rights whose applicability depends on the nature of the rights and of the action at issue. If the rights at issue are private in nature, the litigants are entitled to an Article III court; if, in addition, the action is legal in nature, the litigants are entitled to a jury trial. *Granfinanciera*, 492 U.S. at 53-54. These important constitutional issues cannot turn on the mere presence of a proof of claim form.

Here, the claim reflected in Travellers' proof of claim form is against funds held by the Clerk of the United

States District Court for the Southern District of New York, not against the bankruptcy estate. Travellers thus does not assert a right to a share of the debtor's estate; it filed the proof of claim form merely to preserve its right to assert a claim against the estate if TWA prevails in the preference action. Since that protective proof of claim cannot invoke the claims allowance process until after the preference action has been fully litigated, it cannot affect Travellers' right to a jury trial in the preference action.[1]

2. TWA argues that if the proof of claim filed by Travellers invoked the claims allowance process, it may be adjudicated without regard to Article III. TWA refuses to acknowledge that this precise issue was reserved by the Court in *Granfinanciera*, 492 U.S. at 56 n.11 and that it was neither presented nor addressed in *Langenkamp*. This case presents an appropriate vehicle to resolve that important issue, which permeates bankruptcy litigation.

The line that must be drawn is the one that separates bankruptcy-related proceedings that involve public rights from those that involve private rights.[2] This Court in *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982), concluded that some bankruptcy-related proceedings must be adjudicated by an Article III court. Congress subsequently selected a num-

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[1] In a strained attempt to bring this case within *Langenkamp*, TWA contends that Travellers' proof of claim asserts a right to a share of the bankruptcy estate, because it seeks a distribution as a secured creditor (Opp. 12 n.10). But the proof of claim clearly states that the collateral is in the possession of the Clerk (Pet. 41a) and thus not property of the debtor's estate. *See* Pet. 7 n.5. As even the court of appeals recognized (Pet. 9a), Travellers has no present claim against property of the estate and seeks no distribution from the estate.

[2] As used here, "bankruptcy-related proceedings" include all proceedings arising under title 11, or arising in or related to cases under title 11 as defined in 28 U.S.C. §§ 1334 and 157.

ber of such bankruptcy-related proceedings, denominated them non-core, and declared that they must be adjudicated by an Article III court. *See, e.g.*, 28 U.S.C. §§ 157(b)(2), (d).[3] Almost all other bankruptcy-related proceedings were denominated as core and subjected to adjudication by the non-Article III bankruptcy judge. The Court has made clear, however, that Congress's arrangement is not dispositive. As recognized in *Granfinanciera*, preference actions and fraudulent conveyance actions, although denominated core under the statute, are nonetheless entitled to adjudication by an Article III court. 492 U.S. at 60-61. TWA has offered no reason to depart from that principle merely because the preference defendant has sought to preserve its right to assert a claim that will arise, if at all, only after the preference action has been fully litigated.

3. Contrary to TWA's assertion (Opp. 13), review of this case should not be affected by its interlocutory status. This Court has repeatedly granted certiorari to review interlocutory decisions that threaten to deprive litigants of the constitutional rights at stake here. *Dairy Queen, Inc. v. Wood*, 369 U.S. 469 (1962) (right to a jury trial); *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500 (1959) (same); *LaBuy v. Howes Leather Co.*, 352 U.S. 249 (1957) (right to trial by an Article III court).

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[3] Thus Congress itself has decided that not every proceeding involving the restructuring of debtor-creditor relations can be decided by a bankruptcy judge. Personal injury or wrongful death claims are preserved for determination by Article III judges. 28 U.S.C. § 157(b)(2). Likewise, claims requiring consideration of federal laws regulating interstate commerce must, on request, be decided by an Article III judge. *Id.* § 157(d). TWA's concern (Opp. at 12) that Article III judges will be overwhelmed by the specter of adjudicating preference actions is not only irrelevant in the context of the constitutional mandates here at issue, *Granfinanciera*, 492 U.S. at 63-64, it is also overstated.

CONCLUSION

For the foregoing reasons and the reasons stated in the Petition, this Court should grant a writ of certiorari to review the decision of the United States Court of Appeals for the Third Circuit.

Respectfully submitted,

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